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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,075	11/29/2000	Peter Gansen	64251-006	9638

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EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,075

Applicant(s)

GANSEN ET AL.

Examiner

John m Cooney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 39-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 39-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Applicant's arguments filed March 1, 2004 have been fully considered but they are not persuasive.

Rejections are maintained as set forth below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 48-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' claims are confusing as to intent because it can not be determined what components, elements, or limitations the language "the product of the isocyanate functionality and functionality of the polyol component" are intended to be defining.

It can not be determined what qualities this limitation is defining, and the specification provides no further definition of their meaning. Explanation or correction on the record is required.

Applicants' amendments and remarks are noted and are helpful, and the only note of confusion is that it can not be determined what the above limitation is intended to mean. It appears that the functionality of the isocyanate multiplied by the functionality of the polyol is the intended meaning of this limitation, but since this value determination method is not commonplace in the art examiner feel it appropriate that applicants verify this by stating such on the record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-13 and 39-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicants' claims (see the entire document). The claims do not provide structural features to distinguish their molded articles, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized.

Claims 1-13 and 39-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al.(5,543,225).

Mueller et al. disclose preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicants' claims (see the entire document). The claims do not provide structural features to distinguish their molded articles, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. A polyurethane need only be crosslinked to meet the definition of "gel" in the patentable sense without its definition being particularly defined by the supporting disclosure, and, hence, this component is not seen to differ from the materials disclosed by the cited reference.

Claims 1-13 and 39-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Gardner, Jr.(6,013,210)

Gardner, Jr. discloses preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicants' claims (see the entire document). The claims do not provide structural features to distinguish their molded articles, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. A polyurethane need only be crosslinked to meet the definition of "gel" in the patentable sense without its definition being particularly defined by the supporting disclosure, and, hence, this component is not seen to differ from the materials disclosed by the cited reference.

Claims 1-13 and 39-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Madan et al.(6,294,248).

Madan et al. disclose preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicants' claims (see the entire document). The claims do not provide structural features to distinguish their molded articles, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. A polyurethane need only be crosslinked to meet the definition of "gel" in the patentable sense without its definition being particularly defined by the supporting disclosure, and, hence, this component is not seen to differ from the materials disclosed by the cited reference.

Claims 1-13 and 39-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgdorfer et al.(4,456,642).

Burgdorfer et al. disclose preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicants' claims (see the entire document). The claims do not provide structural features to distinguish their molded articles, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. A polyurethane need only be crosslinked to meet the definition of "gel" in the patentable sense without its

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definition being particularly defined by the supporting disclosure, and, hence, this component is not seen to differ from the materials disclosed by the cited reference.

All of the above recited rejections are maintained for the reasons stated above. Though applicants are entitled to act as their own lexicographer, the originally disclosed supporting disclosure does not recite that by gel applicants mean the materials which are recited and discussed in the paragraph bridging pages 8 and 9 of applicants' remarks on reply. Examiner does not give the term "gel" the meaning assigned by applicants in their remarks, and, accordingly, applicants' arguments relying on such implied meaning are unpersuasive of patentability over any of the above cited references.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

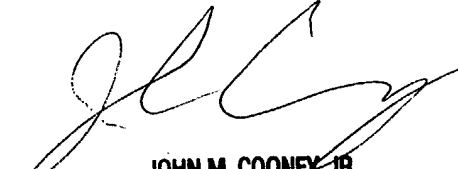
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN M. COONEY, JR.
PRIMARY EXAMINER
09/05/1700